

REQUEST FOR PROPOSALS (RFP)

COUNTY OF SAN BERNARDINO

REGIONAL HUMAN RESOURCES OFFICE AND

HUMAN SERVICES SYSTEM

PERSONNEL & PERFORMANCE, EDUCATION AND RESOURCE CENTER

OFFICE BUILDING IN THE VICTOR VALLEY AREA

GENERAL INFORMATION

The County of San Bernardino has a requirement for the Human Services System (HSS) for office space in the Victor Valley area. The desired occupancy date is December 1, 2001, or sooner if an existing building is proposed.

The County is accepting proposals for the lease of approximately 4,850 square foot build-to-suit building or a modified existing building. General specifications for the building are attached. The facility may be an existing building modified to meet the general specifications or a build-to-suit. The actual square footage and floor plan will vary depending on the layout of the various facilities under consideration. A freestanding, single tenant, building is preferred, but not required.

The facility is preferred, but not required, to be located within the area shown on the attached map. The preferred area is bounded on the north by Mojave Drive and Highway 18, on the west by Amargosa Street, Victorville, on the south by Eucalyptus Street in Hesperia, and on the east by Apple Valley Road, Apple Valley.

The facility will be utilized for a Regional Human Resources Office and a Personnel & Performance, Education and Resource Center (PERC). The new Victor Valley facility will promote effective hiring of area residents, become the training facility for all County departments in the High Desert area and minimize the need to travel to downtown San Bernardino. The desired number of parking spaces is seventy-one (71) three (3) of which must be handicapped accessible.

The term of the lease is preferred to be seven to 10 years, with options to extend.

The successful Proposer will be expected to: Provide a project location; provide a licensed architect and complete plans for modification or construction; obtain all applicable government approvals for modification or construction of a building; construct the building and/or improvements; enter into a lease agreement with the County of San Bernardino; and maintain the facility.

It is the County's intent that the contractual relationship between the Proposer and the County shall be substantially as set forth in the attached sample lease agreement. In developing the proposal, the Proposer should carefully review the agreement to take into consideration the rights, obligations, and costs associated therewith. For example, in the event the Proposer intends to contract for the construction of any portions of the improvements outlined in the attached General Specifications, the Proposer should review Paragraph 41, LANDLORD'S IMPROVEMENTS, and take into account the applicable portions of Labor Code Section 1720.2 and 1770 et seq regarding general prevailing wage. **Any change in the agreement, which the Proposer desires, must be specified in the proposal.**

This is not a solicitation of bids. The County reserves the right, for any reason, to accept or reject any one or more proposals; to negotiate the terms and specifications for the facility; to modify any part of the RFP; or to issue a new RFP. The County assumes no responsibility or liability for the accuracy of any information set forth in maps, reports, or other documents/materials provided for the Proposer's use in developing their proposal. The Proposer assumes all liability in the use of such information in developing their proposal. The County of San Bernardino assumes no responsibility or liability for costs incurred by the Proposer in the preparation of a proposal and response to this RFP. Materials submitted in connection with this RFP are for the exclusive use of the County of San Bernardino. All proposals will become the property of the County and will not be subject to return. All information contained therein shall be subject to public disclosure under the California Public Records Act, Government Code section 6250 and following. Except as provided below, submission of the proposal shall be deemed to be a waiver of any exemption or exception to disclosure, which the Proposer may otherwise have.

The Proposer is responsible for making all necessary investigations and examinations of documents affecting performance. Failure to do so will not act to relieve any condition of the sample agreement or the documents. It is mutually agreed that the submission of a proposal shall be considered conclusive evidence that the Proposer has made such investigations and examinations.

Any reasonable inquiry to determine the responsibility of a Proposer may be conducted by the County. The submission of a proposal shall constitute permission by the Proposer for the County to verify all information contained therein. If the County deems it necessary, additional information may be requested from the Proposer. Failure to comply with any such request may disqualify a Proposer from further consideration. Such additional information may include evidence of financial ability to perform, for example, tax returns, bank statements, etc. All financial information submitted in response to request for financial data is subject to disclosure under the provisions of the California Public Records Act, Government Code section 6250 and following. In the event the County receives a request for the disclosure of any such information, prior to the release of any such information, the County will contact the Proposer and will not release the information if the Proposer, within five (5) days of receipt of notice of the disclosure request, requests non-disclosure, provides County a legally sound basis for non-disclosure and agrees to indemnify, defend and hold harmless the County in any action brought to disclose such information. The Proposer, by submitting such information, agrees that the failure of County to contact the Proposer prior to the release of such information will not be a basis for liability by County or any County employee to Proposer.

The County, their agents, officers, volunteers, and employees, shall not be liable for any claims, liabilities, penalties, fines or for damage to any goods, properties or effects of any person, caused by or resulting from any acts, errors or omissions of the Proposer or the Proposer's agents, employees, or representatives.

The County of San Bernardino established a Child Support Compliance Program. (County Code Section 110.0101 et seq.) The Program is intended to assist the District Attorney (DA) in locating County employees, contractors and business licensees who owe child, family, and spousal support obligations. This Program is designed to enhance the welfare of dependents by ensuring that those who owe a duty of support are held accountable for their responsibilities, in order to mitigate the County's resultant financial burden.

All contractors doing business with the County must submit a completed Principal Owner Information Form (POI Form).

Failure by a contractor to submit the POI Form within 90 days of the request shall be grounds upon which the County may terminate a contract. In addition, a new contractor that does not have an existing vendor

code assigned by the Auditor/Controller must submit the POI Form to the DA (with a copy to the soliciting department) prior to the award of a contract.

INSTRUCTIONS TO PROPOSERS

I. Proposals deemed responsive to this RFP:

A Proposer's response to the RFP must be made according to the specifications set forth in this section, both for content and sequence.

Proposers must present evidence, satisfactory to the County, indicative of their ability to design, construct, finance, operate and maintain the specified facilities. Proposers must include the following information in sequence.

GENERAL INFORMATION

II. The following is a list of items that must accompany the proposal:

- A. Name of Proposer exactly as it will appear on the agreement.
- B. Address of Proposer for purposes of notice or other communication relating to the proposal.
- C. Contact Person.
- D. Telephone number of Proposer.
- E. Type of ownership the Proposer intends to operate the business which this proposal is concerned, e.g.: a sole proprietorship; Partnership; Corporation; Joint Venture, names of all partners, officers, etc., and who has the authority to sign the lease agreement.
- F. Proposed method of financing the development and/or modifications.
- G. The selected Proposer may be required to provide financial information to evidence ability to perform (for example, tax returns, bank statements, etc.).
- H. Proposer's Experience.
- I. References.
- J. Description of the Proposed Site and Building.

A complete description of the site and building including; location, the proximity in terms of time and distance to major arterial streets, major highways and freeways and public transportation; the building type (design), the site (zoning, lot size, configuration, setbacks, expansion space available if any); parking (number, location, lighting, security) and additional general information regarding the site such as aesthetic considerations, features of the property and any other details of the site that have not been addressed. Proposers should include how any existing building will be modified to meet the general specifications.

- K. Provide proof of ownership of the site or other documentation showing Proposer's control of the proposed site sufficient to enter into the contemplated lease with the County.

- L. Provide lease terms and any limited or conditional factors affecting the property. Include the cost per square foot for a turn-key full service lease, annual adjustment requested, if any, basic term (County prefers five to seven years), and option to extend period(s). The cost per square foot figure must include a breakdown of operating expenses and landlord improvements. **The cost per square foot amount you provide should be your lowest and best offer.** Proposers are requested to include in their proposal their lowest cost per square foot amount under both of the following two different assumptions:

1. The lease agreement will include Paragraph 40, COUNTY'S RIGHT TO TERMINATE LEASE; and,
2. The lease agreement will NOT include Paragraph 40, COUNTY'S RIGHT TO TERMINATE LEASE.

Proposers may submit a proposal with their lowest cost per square foot amount for only one of the two assumptions, but should specify clearly which assumption is being priced and that the Proposer does not desire to submit an amount under the other assumption.

NOTE: Landlord Improvements are only those Improvements to the Basic Building provided by the Landlord to meet the specific needs of the County department that will occupy the building. Landlord Improvements are normally considered only for items from the floor to the ceiling and within the interior walls. Proposers shall specify in detail any and all Improvements to be made which they request to be treated as Landlord Improvements qualifying for reimbursement in the event of a termination by County. The County does not pay interest on the reimbursable Landlord Improvement costs. The County considers the following types of items are NOT reimbursable Landlord Improvements and are NOT reimbursable in the event of termination by County under Paragraph 40c, COUNTY'S RIGHT TO TERMINATE LEASE:

Demolition,
Dump/cleanup fees,
Replacement or installation of HVAC units,
Fire sprinklers, extensions and heads,
Fire alarm systems and extinguishers,
Asbestos or hazardous material removal,
Cost to improve property to conform to current building, health, safety and code requirements,
Architectural/engineering fees,
Building permits,
Repair or reconfiguration of an existing parking lot,
Roof,
Exterior windows,
Landscaping,
Similar items, since this list is not intended to be all inclusive of non-reimbursable Landlord Improvements.

Failure of Proposer to specify Improvements qualifying for reimbursement shall mean that no reimbursement shall be made for any Improvements in the event of such early termination by County.

- M. Provide estimated development schedule. Desired, but not mandatory, occupancy date is December 1, 2001 or sooner.
- N. Complete and submit a completed Principal Ownership Information form.
- O. The proposal must be made by the Proposer or by an agent bearing a notarized authorization or power of attorney signed by the Proposer authorizing the agent to act in the Proposer's behalf.

If the proposal is made by an individual, it shall be signed with the full name of the Proposer, and his/her address shall be given. If it is made by a partnership, it shall be signed with the partnership name and by an authorized partner. If it is made by a joint venture, it shall be signed by the authorized representative of the joint venture. If it is made by a corporation, it shall be signed by the authorized agent for the corporation.

- P. Provide information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent your business. The information provided must include a list of former county administrative officials who terminated county employment within the last five years and who are now officers, principals, partners, associates or members of the business. Should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of your business. For purposes of this section, "county administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Administrative Officer or member of such officer's staff, county department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. Failure to provide this information may result in the response to the request for proposal being deemed non-responsive.
- Q. The proposal must be submitted as follows:

- 1) Provide seven (7) copies of the proposal in a sealed envelope marked "RFP – HSS - PERC".
- 2) Include name, address and daytime phone number of Proposer (or authorized agent) on the envelope.
- 3) The package may be sent by certified mail or hand delivered, but **must arrive** not later than 5:00 p.m., June 12, 2001, to Real Estate Services, 825 East Third Street, Room 207, San Bernardino, CA 92415-0832.

It is the sole responsibility of the Proposer to see that his/her proposal is completed and received in proper time. Proposals received after the deadline may be rejected.

III. Proposal Evaluation and Selection:

A. Evaluation Process: All Proposals will be subject to a standard review process developed by County. A primary consideration shall be the effectiveness of the agency organization in the delivery of comparable or related services based on demonstrated performance.

B. Evaluation Criteria:

- 1) Initial Review: All proposals will be initially evaluated to determine if they meet the following minimum requirements:
 - a. The proposal must be complete, in the required format, and be in compliance with all the requirements of this RFP.

However, no proposal shall be rejected if it contains only a minor irregularity, defect or variation, provided the minor irregularity, defect or variation is considered by the County to be immaterial or inconsequential, and allowing the Proposer to remedy the minor irregularity, defect or variation will not give the Proposer an unfair advantage over other Proposers. In such cases, the Proposer will be notified of the deficiency in the proposal and given an opportunity to correct the irregularity, defect or variation or the County may elect to waive the deficiency and accept the proposal.

- 2) Evaluation: Proposals meeting the above requirements will be evaluated on the basis of the following criteria:
 - a. Proposer's Experience/Ability to Finance.
 - b. Location.
 - c. Terms/Cost to County.
 - d. Building Structure/Site Development.
 - e. RFP Package Completeness.

Selection will be based on determination of which proposal will best meet the needs of the County and the requirements of this RFP.

- 3) Lease Award: A lease will be awarded based on a competitive selection of proposals received. The contents of the proposal of the successful Proposer, will become lease obligations. Failure to accept these obligations in a lease agreement may result in cancellation of the award. The County reserves the right to negotiate any proposed term(s) with the selected Proposer prior to lease award.
- 4) Protests: Proposers may protest the recommended award, provided the protest is in writing, clearly identifies the RFP, is delivered to the address listed above for proposal submission, and submitted within five (5) calendar days of the date of the notification of intent to award.

Grounds for a protest are that the County failed to follow the selection procedures and adhere to requirements specified in the RFP or any addenda or amendments; there has been a violation of conflict of interest as provided by California Government Code Section 87100 et seq.; or violation of State or Federal law. Protests will not be accepted on any other grounds. In event of a protest, all protests will be handled by a panel designated by the Assistant County Administrative Officer.

The County will consider only those specific issues addressed in the written protest. A written response will be directed to the protesting Proposer within fourteen (14) calendar days of receipt of the protest, advising of the decision with regard to the protest and the basis for the decision.

- 5) Final Approval: Proposer acknowledges any lease resulting from this RFP will be awarded by final approval of the San Bernardino County Board of Supervisors, and that unless and until such approval by the Board, there is no binding obligation by the County, and any action by the Proposer taken prior to such approval is at the Proposer's sole risk.
- 6) Inaccuracies or Misrepresentations: If in the course of the RFP process or in the administration of a resulting lease, the County determines that the Proposer has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, the Proposer may be terminated from the RFP process or in the event a lease has been awarded, the lease may be immediately terminated.



FOR COUNTY USE ONLY

E	X	New	Vendor Code			SC	Dept.	A	Contract Number	
M		Change								
X		Cancel								
County Department						Dept. Orgn.			Contractor's License No.	
County Department Contract Representative						Ph. Ext.			Amount of Contract	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	Activity	GRC/PROJ/JOB Number				
Commodity Code			Estimated Payment Total by Fiscal Year							
			FY		Amount		I/D			
Project Name			FY		Amount		I/D			

County of San Bernardino

F A S

CONTRACT TRANSMITTAL

CONTRACTOR _____

Birth Date _____ Federal ID No. or Social Security No. _____

Contractor's Representative _____

Address _____ Phone _____

Nature of Contract: (Briefly describe the general terms of the contract)

FULL SERVICE LEASE

This Lease Contract is for a period of _____ () years with _____ () _____-year option(s) to extend. Leased premises consist of _____ square feet with build-to-suit offices. Rental is \$____.____ per square foot per month.

LANDLORD shall provide all interior and exterior maintenance to include grounds, parking lot maintenance and exterior lighting. LANDLORD to pay water, sewer, trash and all other utilities. COUNTY to provide its own telephone service including pay telephones, vending machines and security service.

GROSS LEASE

This Lease Contract is for a period of _____ () years with _____ () _____-year option(s) to extend. Leased Premises consist of _____ square feet with build-to-suit offices. Rental is \$____.____ per square foot per month.

LANDLORD shall provide all exterior maintenance to include grounds, parking lot maintenance and exterior lighting. LANDLORD to pay water, trash, fire alarm service and sewer.

COUNTY shall pay for all interior utilities, electrical and gas. COUNTY to provide for janitorial, vending machines, security and its own telephone service including pay telephones.

REMEMBER: (1) Be sure to edit the agreement before providing it to anyone you are negotiating with on a proposed facility.

(2) Also, if the Paragraph, EXPANSION OF RENTAL SPACE, is included in the lease, the number of certain paragraphs need to be changed in the lease agreement to reflect this additional paragraph. (Paragraphs Nos. 12(c), 18(g), and 37(c).

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form	Reviewed as to Affirmative Action	Reviewed for Processing
► SEE SIGNATURE PAGE	►	►
County Counsel		Agency Administrator/CAO
Date	Date	Date

COUNTY OF SAN BERNARDINO

LEASE AGREEMENT

LANDLORD: _____

COUNTY: COUNTY OF SAN BERNARDINO
Internal Services Group
Real Estate Services
825 East Third Street
San Bernardino, CA 92415-0832

PREMISES: _____

TERM OF LEASE: ____ (____) years with ____ (____) ____-year option(s)

COMMENCEMENT DATE OF LEASE: _____

COST PER SQUARE FOOT: \$____.____ full service, modified gross

COUNTY CONTRACT NUMBER:

TYPED:

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Exhibit A, Premises Specifications

Exhibit B, Licensed Janitorial and Maintenance Contractor Services

Exhibit C, Principal Ownership Information Form

Exhibit D, Estoppel Certificate

Exhibit E, Subordination, Nondisturbance and Attornment Agreement

LEASE AGREEMENT

1. **PARTIES:** This lease ("Lease") is made between _____ (jointly and severally "LANDLORD"), and the County of San Bernardino ("COUNTY"), who agree as follows:

2. **PREMISES LEASED:** LANDLORD leases to COUNTY and COUNTY leases from LANDLORD _____ square feet of building, real property, and other improvements, with _____ (____) parking spaces, including handicapped parking, located at _____ ("Premises"), as described in Exhibit A, Premises Specifications.

3. **TERM:**

a. **Initial Term.** The Lease's initial term ("Initial Term") shall commence on _____ ("Commencement Date") and end on _____ ("Ending Date"), provided that all Improvements to be constructed by LANDLORD pursuant to **Paragraph 40, LANDLORD IMPROVEMENTS**, are substantially completed and are accepted by COUNTY. For the purposes of this Lease, "Substantially Completed" shall mean that the Premises can be used for their intended purposes and have been certified for occupancy by the entity that issued the building permits, notwithstanding that minor corrections and/or additions remain to be completed, it being understood that LANDLORD shall promptly complete said corrections and/or additions. In the event the term commences prior to the Commencement Date as the result of COUNTY's election under **subparagraph 3c, Early Possession**, the Ending Date shall not be changed. If LANDLORD is unable to Substantially Complete the Improvements or deliver possession of the Premises by the Commencement Date, COUNTY shall not be liable for any rent and this Lease shall not commence until LANDLORD Substantially Completes the Improvements and delivers possession of the Premises to COUNTY. Any such delay in possession shall not affect the Ending Date.

b. **Early Access.** LANDLORD shall allow the COUNTY early access ("Early Access") to the Premises at any time prior to the Commencement Date for the purpose of the COUNTY or its representatives installing communications equipment, modular furniture, alarms and such other items that the COUNTY may reasonably desire and to inspect the status of the construction of the Improvements for the Premises. COUNTY shall exercise its Early Access rights at a time and in a manner that will not unreasonably interfere with LANDLORD's construction of the Improvements. If COUNTY totally or partially occupies the Premises under this Early Access provision prior to the Commencement Date, the obligation to pay rent shall be abated for the period of the Early Access. All other terms of this Lease shall, however, be in effect during such period. Any such Early Access shall not affect the Commencement Date or the Ending Date.

c. Early Possession. The COUNTY may elect to totally or partially take possession of the Premises at any time prior to the scheduled Commencement Date ("Early Possession"). COUNTY shall exercise its Early Possession rights at a time and in a manner that will not unreasonably interfere with LANDLORD's construction of the Improvements. If COUNTY totally or partially takes possession of the Premises under this Early Possession provision prior to the Commencement Date, the obligation to pay rent for only that portion of the Premises possessed shall commence for the period of such Early Possession. Such Early Possession shall not be considered as the COUNTY's acceptance of any portion of the Improvements as Substantially Completed. The COUNTY may vacate all or any portion it has possessed as Early Possession without in any manner affecting the Commencement Date, the Ending Date or any other portion of the Lease. All other terms of this Lease shall, however, be in effect during such period. Any such Early Possession shall not affect the Commencement Date or the Ending Date.

d. Delay in Possession. LANDLORD agrees to use all commercially reasonable efforts to deliver possession of the Premises with all of the Improvements Substantially Completed to COUNTY by the Commencement Date. If as a result of causes beyond LANDLORD's reasonable control, LANDLORD is unable to deliver possession as agreed, this Lease shall not be voidable, nor shall such failure affect the validity of this Lease. If possession is not delivered within ninety (90) days after the Commencement Date, COUNTY can elect to terminate this Lease by giving written notice to LANDLORD at any time before LANDLORD delivers possession of the Premises to COUNTY. If COUNTY elects to terminate this Lease pursuant to this provision, COUNTY shall be discharged of all obligations under this Lease.

4. **RENT:**

- a. COUNTY shall pay to LANDLORD the following monthly rental payments in arrears on the last day of each month, commencing when the term commences, continuing during the term:

Commencement thru _____, 20__ - monthly payments of \$_____.
_____, 20__ thru _____, 20__ - monthly payments of \$_____.
_____, 20__ thru _____, 20__ - monthly payments of \$_____.
_____, 20__ thru _____, 20__ - monthly payments of \$_____.
_____, 20__ thru _____, 20__ - monthly payments of \$_____.

- b. Rent for any partial month shall be prorated based on the actual number of days of the month. All rent shall be paid to LANDLORD at the address to which notices to LANDLORD are given.

c. If the COUNTY has accepted the Premises as Substantially Completed with minor corrections and/or additions remaining to be completed, only eighty percent (80%) of the monthly rental will be paid to LANDLORD, and the remaining twenty percent (20%) of the monthly rental will accrue from the Commencement Date of this Lease but will not be paid to LANDLORD until all such minor corrections and/or additions have been completed and accepted by COUNTY. If the COUNTY withholds monthly rental payments under this subparagraph, the COUNTY will not be in default and no interest or service charges will be added to the amounts due LANDLORD upon completion of the minor corrections and/or additions. The minor corrections and/or additions remaining to be completed are subject to **subparagraph 12b, MAINTENANCE**.

5. **OPTION TO EXTEND TERM:**

a. LANDLORD gives COUNTY the option to extend the term of the Lease on the same provisions and conditions, except for the monthly rent, for _____ (____) _____-year periods ("extended terms") following expiration of the initial term, by COUNTY giving notice of its intention to exercise the option to LANDLORD prior to the expiration of the preceding term or during any holding over pursuant to **Paragraph 7, HOLDING OVER**. The rent for each extended term shall be adjusted by good faith negotiation of the parties to the fair market rental rate then prevailing based upon the rental rates of comparable leased property in San Bernardino County.

(1) The negotiations and any dispute resolution method used will be guided by the fact that the monthly rent in **Paragraph 4, RENT**, includes amounts for basic rent for space and payment for building Improvements made by LANDLORD under **Paragraph 40, LANDLORD'S IMPROVEMENTS**. The basic rent for space starts at _____ (\$____) per square foot and increases at the rate of _____ percent (____%) per year to end at the rate of _____ (\$____) per square foot. All LANDLORD Improvements will have been paid for within the Initial Term and no further payment for these Improvements will be made by COUNTY. The negotiated/arbitrated rent shall be based upon the ending basic rental rate for space and shall not include any rental amount for the LANDLORD's Improvements.

6. **RETURN OF PREMISES:** The COUNTY agrees that it will, upon any termination of this Lease, return the Premises in as good condition and repair as the Premises now are or shall hereafter be put; reasonable wear and tear excepted.

7. **HOLDING OVER:** In the event the COUNTY shall hold over and continue to occupy the Premises with the consent of the LANDLORD, expressed or implied, the tenancy shall be deemed to be a tenancy from month-to-month upon the same terms and conditions, including rent, as existed and prevailed at the time of the expiration of the term of this Lease.

8. **TAXES:** LANDLORD shall pay all real property taxes, and general and special assessments levied and assessed against the Premises.

9. **USE:** COUNTY shall occupy and use the Premises during the term hereof for the purposes of COUNTY business.

10. **HEALTH, SAFETY AND FIRE CODE REQUIREMENTS:** As a condition precedent to the existence of this Lease, LANDLORD, at its sole expense will ensure the Premises meet the applicable requirements of the Health, Safety, Fire and Building Codes for public and governmental buildings, including any requirements for a notice of completion, certificate of occupancy and the Americans with Disabilities Act ("ADA"). Additionally, LANDLORD warrants that any improvements on or in the Premises which have been constructed or installed by LANDLORD or with LANDLORD's consent or at LANDLORD's direction shall comply with all applicable covenants or restrictions of record and applicable building codes, regulations and ordinances in effect on the Commencement Date. LANDLORD also warrants to COUNTY that LANDLORD has no knowledge of any claim having been made by any governmental agency that a violation or violations of applicable building codes, regulations, or ordinances exist with regard to the Premises as of the Commencement Date. Further, LANDLORD shall ensure that all computer controlled Premises components (except those owned by the COUNTY, if any) are Year 2000 compliant prior to acceptance of the Premises for occupancy by the COUNTY. The LANDLORD must verify compliance by physical testing and/or written confirmation from the component and/or systems manufacturer. "Computer controlled Premises components" refers to software driven technology and embedded microchip technology. This includes, but is not limited to, programmable thermostats, HVAC controllers, auxiliary elevator controllers, utility monitoring and control systems, fire detection and suppression systems, alarms, security systems and any other Premises control systems utilizing microcomputer, minicomputer, or programmable logic controllers. "Year 2000 compliant" means computer controlled Premises components that accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations. Should the continued occupancy of the leased Premises be in any way prejudiced or prevented due to changes in the ADA or the Health, Safety or Fire Codes for Public Buildings, the LANDLORD herein shall correct, update and comply with said changes at LANDLORD's cost. Upon completion of repair/replacement to effect Year 2000 compliance, the LANDLORD shall verify compliance by physical testing and/or written confirmation from the component and/or systems manufacturer and advise the COUNTY that such replacement components have been verified as compliant.

11. **SIGNS:** COUNTY will display from the windows and/or marquee of the Premises only such sign or signs as are not prohibited by law.

12. **MAINTENANCE:**

a. LANDLORD at its cost shall perform such inspections, maintenance and repairs as are necessary to ensure that all portions of the Premises, including but not limited to the following, are at all times in good repair and safe condition:

- (1) The structural parts of the building and other improvements that are a part of the Premises, which structural parts include the foundations, bearing and exterior walls (including glass and doors), subflooring, and roof; and,
- (2) The electrical, plumbing, and sewage systems, including, without limitation, those portions of the systems owned or controlled by LANDLORD lying outside the Premises; and,
- (3) Window frames, gutters, and downspouts on the building and other improvements that are a part of the Premises; and,
- (4) Heating, ventilation and air conditioning (HVAC) systems servicing the Premises additionally, air-conditioning and heating filters are to be changed quarterly. Upon commencement of this lease agreement and every three (3) years thereafter, LANDLORD is to provide an air balance certificate and maintenance of HVAC servicing; and,
- (5) The grounds, including all parking areas and outside lighting, grass, trees, shrubbery and other flora; and,
- (6) The servicing of fire extinguishers or any other fire suppression equipment attached to the facility; and,
- (7) Maintenance and janitorial services. Maintenance and janitorial services must be performed in a workman-like manner by licensed and qualified independent contractors, as set forth in Exhibit B, Licensed Janitorial and Maintenance Contractor Services. LANDLORD shall perform maintenance and janitorial services at a time and in manner that will cause the least possible inconvenience, annoyance, or disturbance to COUNTY. LANDLORD shall follow the carpet manufacture's maintenance requirements and maintain the carpet manufacture's warranty for the carpet.

During the seventh year of the initial term and at the beginning of every seventh year thereafter, replace the carpet throughout the facility, meeting the same criteria as originally described in Exhibit A, Premises Specifications; and,

During the third year of the initial term and at the beginning of every third year thereafter, repaint the interior of the facility, meeting the same criteria as originally described in Exhibit A, Premises Specifications; and,

b. Without in any way affecting LANDLORD's duty to inspect, maintain and repair the Premises and regardless of whether any specific notice of need for maintenance or repair is provided to LANDLORD by the COUNTY, the COUNTY may request specific maintenance or repairs. Any such request may be made orally, by telephone or otherwise. If, (a) COUNTY gives notice to LANDLORD of a condition requiring maintenance or repairs, and LANDLORD does not commence the performance of its maintenance or repair obligations within ten (10) days of receiving such notice, or does not diligently prosecute its obligations to completion thereafter, or (b) in the case of an emergency, whether or not COUNTY has given notice to LANDLORD, LANDLORD does not immediately perform its obligations, COUNTY can perform the obligations and have the right to be reimbursed for the sum COUNTY actually and reasonably expends (including charges for COUNTY employees and equipment) in the performance of LANDLORD's obligations. The sum expended by COUNTY shall be due from LANDLORD to COUNTY within five (5) days of notice of such sum, and if paid at a later date shall bear interest at the maximum rate the COUNTY is permitted by law to charge from the date the sum was paid by COUNTY until COUNTY is reimbursed by LANDLORD. If LANDLORD fails to reimburse COUNTY as required by this paragraph, COUNTY shall have the right to withhold from future rent due the sum COUNTY has paid until COUNTY is reimbursed in full for the sum and interest on it. The remedies set forth in this paragraph are in addition to and do not in any manner limit other remedies set forth in particular paragraphs of this Lease. COUNTY shall forward to LANDLORD receipts and/or documentation supporting the amount withheld.

c. COUNTY, at its option and sole discretion, reserves the right to require the LANDLORD to hire a qualified property management company to manage the Premises, and that property management services, not limited to maintenance and repair, be performed pursuant to a property management agreement. The Premises must be inspected by the Property Manager at least every other week, beginning the second week after the commencement date, and daily by the janitorial staff, to ensure the Premises are maintained properly. Inspections must be coordinated with the COUNTY representative. The COUNTY has the right to review the selection of the property manager and to review the agreement with the manager.

13. **ALTERATIONS:** COUNTY shall not make any structural or exterior improvements or alterations to the Premises without LANDLORD's consent. Any such alterations shall remain on and be surrendered with the Premises on expiration or termination of the Lease.

14. **FIXTURES:** COUNTY shall have the right during the term(s) of this Lease to install shelving and fixtures, and make interior, non-structural improvements or alterations in the Premises. Such

shelving, fixtures, improvements, and alterations shall remain the property of the COUNTY and may be removed by the COUNTY during the term(s) of this Lease or within a reasonable time thereafter, provided that the COUNTY restores the Premises to the condition as it existed at the commencement of this Lease, reasonable wear and tear excluded, or the COUNTY in its sole discretion may elect to surrender all or any part of such shelving, fixture, improvements and alterations to the LANDLORD, in which case COUNTY shall have no duty to restore the Premises. Any such election to surrender must be in writing, but need not be accepted by LANDLORD to be effective.

15. **UTILITIES:** LANDLORD shall furnish to the Premises and pay all service charges and related taxes for electric, gas, water, sewer, trash, fire alarm service and all other utilities. COUNTY shall furnish and pay for security, vending machines and its own telephone service including pay telephones.

16. **HOLD HARMLESS:** The LANDLORD agrees to indemnify, defend (with counsel approved by COUNTY) and hold harmless the COUNTY, its authorized officers, agents, volunteers and employees, from any and all claims, demands, actions, losses, damages, liability, and/or for any costs or expenses incurred by the COUNTY arising out of: (a) any improvements constructed by the LANDLORD pursuant to the Lease; (b) the LANDLORD's acts and omissions in connection with its ownership of the property; (c) the use of common areas and leasehold spaces other than the Premises; and (d) toxic waste and environmental contamination not resulting from the COUNTY's use of the Premises, except where such indemnification is prohibited by law. The LANDLORD's indemnification obligation applies to the COUNTY's "active" as well as "passive" negligence, but does not apply to the COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782. The LANDLORD's indemnification obligation shall survive the COUNTY's tenancy. The insurance provisions in **Paragraph 17, INSURANCE**, shall not be interpreted in a manner that limits the indemnification obligation.

17. **INSURANCE:**

- a. COUNTY is a public entity and is self-insured.
- b. Without in any way affecting the indemnity herein provided and in addition thereto, the LANDLORD shall secure and maintain throughout the Lease the following types of insurance with limits as shown:
 - (1) Workers' Compensation: A program of Workers' Compensation insurance or a state-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with Two Hundred Fifty Thousand and 00/100 Dollars

(\$250,000.00) limits, covering all persons providing services on behalf of the LANDLORD and all risks to such persons under this agreement.

If LANDLORD has no employees, it may certify or warrant to COUNTY that it does not currently have any employees or individuals who are defined as “employees” under the Labor Code and the requirement for Workers’ Compensation coverage will be waived by the COUNTY’s Risk Manager.

If LANDLORD is a non-profit corporation organized under California or Federal law, volunteers for the LANDLORD are required to be covered by Workers’ Compensation insurance. If the COUNTY’s Risk Manager determines that there is no reasonably priced coverage for volunteers, evidence of participation in a volunteer insurance program may be substituted.

- (2) Comprehensive General and Automobile Liability Insurance: This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than One Million and 00/100 Dollars (\$1,000,000.00).
 - (3) Fire Insurance: Standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements to the extent of at least sixty percent (60%) of the full replacement value of the Premises.
- c. Additional Named Insured: All policies, except for Workers' Compensation, shall contain additional endorsements naming the COUNTY and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of this agreement.
- d. Waiver of Subrogation Rights: LANDLORD shall require the carriers of the above required coverages to waive all rights of subrogation against the COUNTY, its officers, employees, agents, volunteers, contractors and subcontractors.
- e. Policies Primary and Non-Contributory: All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.
- f. Proof of Coverage: LANDLORD shall immediately furnish certificates of insurance to COUNTY, evidencing the insurance coverage, including endorsements, above required prior to occupying the Premises and the commencement of performance of services hereunder, which certificates shall provide that such

insurance shall not be terminated or expire without thirty (30) days written notice to the COUNTY, and LANDLORD shall maintain such insurance from the time of occupancy and commencement of performance of services hereunder until the completion of such occupancy. Within sixty (60) days of the commencement of this agreement, the LANDLORD shall furnish certified copies of the policies and all endorsements.

- g. Insurance Review: The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the COUNTY. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the COUNTY, inflation, or any other item reasonably related to the COUNTY's risk. Any such reduction or waiver for the entire term of the agreement and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this agreement. LANDLORD agrees to execute any such amendment within thirty (30) days of receipt.

h. Failure to Have Insurance: In the event COUNTY receives a notice of cancellation concerning any of the required policies, or should LANDLORD fail to have in effect the required coverage at any time during this Lease, COUNTY may give notice to LANDLORD to immediately suspend all LANDLORD activities on the Premises and/or notice to reinstate or acquire the affected coverage. Should LANDLORD fail to reinstate or acquire the affected coverage within ten (10) days of COUNTY's notice to reinstate or acquire such coverage, COUNTY, in its sole discretion, may either; (a) terminate this Lease immediately upon written notice to LANDLORD, or, (b) reinstate or acquire the affected coverage, in which case LANDLORD shall reimburse COUNTY for the sum paid to reinstate or acquire the coverage. The sum paid by COUNTY shall be due from LANDLORD to COUNTY within five (5) days of notice of such sum, and if paid at a later date shall bear interest at the maximum rate the COUNTY is permitted by law to charge from the date the sum was paid by COUNTY until COUNTY is reimbursed by LANDLORD. If LANDLORD fails to reimburse COUNTY as required by this paragraph, COUNTY shall have the right to withhold from future rent due the sum COUNTY has paid until COUNTY is reimbursed in full for the sum and interest on it. The remedies set forth in this paragraph are in addition to and do not in any manner limit other remedies set

forth in particular paragraphs of this Lease. COUNTY shall forward to LANDLORD receipts and/or documentation supporting the amount withheld.

- i. COUNTY shall have no liability for any premiums charged for such coverage(s). The inclusion of COUNTY as additional named insured is not intended to and shall not make it a partner or joint venturer with LANDLORD.

18. **DESTRUCTION OF PREMISES:**

a. During the term of this Lease, if any casualty renders a portion of the Premises unusable for the purpose intended, then LANDLORD shall, at LANDLORD's expense, restore the Premises and repair any damages caused by such casualty as soon as reasonably possible and this Lease shall continue in full force and effect. If LANDLORD does not commence the restoration of the Premises in a substantial and meaningful way within thirty (30) days following the LANDLORD's receipt of written notice of the casualty, or should LANDLORD fail to diligently pursue completion of the restoration of the Premises, or if the time required to restore the Premises is estimated to exceed ninety (90) days, COUNTY may, at its option, terminate this Lease immediately upon written notice to the LANDLORD. If COUNTY elects to terminate this Lease pursuant to this provision, COUNTY shall be discharged of all future obligations under this Lease. Alternatively, if LANDLORD fails to commence the restoration of the Premises or fails to diligently pursue the completion of the restoration as aforesaid, COUNTY may, at its option and in its sole discretion, after notice to LANDLORD, perform LANDLORD's obligations and restore the Premises. If COUNTY elects to restore the Premises, COUNTY shall have the right to be reimbursed for all sums it actually and reasonably expends (including charges for COUNTY employees and equipment) in the performance of LANDLORD's obligations. The sum paid by COUNTY shall be due from LANDLORD to COUNTY within five (5) days of notice of such sum, and if paid at a later date shall bear interest at the maximum rate the COUNTY is permitted by law to charge from the date the sum was paid by COUNTY until COUNTY is reimbursed by LANDLORD. If LANDLORD fails to reimburse COUNTY as required by this paragraph, COUNTY shall have the right to withhold from future rent due the sum COUNTY has paid until COUNTY is reimbursed in full for the sum and interest on it. The remedies set forth in this paragraph are in addition to and do not in any manner limit other remedies set forth in particular paragraphs of this Lease. COUNTY shall forward to LANDLORD receipts and/or documentation supporting the amount withheld. For the purposes of this paragraph, the phrase "commence . . . in a substantial and meaningful way" shall mean either the unconditional authorization of the preparation of the required plans, the issuance of any required Building Permits or the beginning of the actual work on the Premises.

b. In the event there is a destruction of a portion of the Premises as set out in **subparagraph a above**, there shall be an abatement or reduction of the rent between the date of destruction and the date of completion of restoration or the date of termination of this Lease, whichever comes first. The abatement or reduction of the rent shall be in proportion to the degree to which COUNTY's use of the Premises is impaired.

c. In the event there is a destruction of a portion of the Premises as set out in **subparagraph a**, above, and the Lease is not terminated because of such destruction, LANDLORD

agrees to use any and all insurance proceeds received for said destruction in the restoration of the Premises.

d. In the event LANDLORD is required to restore the Premises as provided in this paragraph, LANDLORD shall restore, at LANDLORD's expense, any structural or exterior improvements or alterations to the Premises made by COUNTY pursuant to **Paragraph 13, ALTERATIONS**, of this Lease, but shall not be responsible for restoring any shelving, fixtures, or interior nonstructural improvements or alteration made by the COUNTY pursuant to **Paragraph 14, FIXTURES**, of this Lease.

e. It is the purpose and intent of this paragraph to determine who shall bear the initial responsibility for restoration of the Premises in the event of any such destruction and not to determine the party ultimately responsible for the costs of such restoration.

19. **LANDLORD'S DEFAULT:** Except where another time limit is specifically provided, LANDLORD shall be in default of this Lease if LANDLORD fails or refuses to perform any material provisions of this Lease and such failure or refusal to perform is not cured within thirty (30) days following LANDLORD's receipt of written notice of default from COUNTY. If the default cannot reasonably be cured within thirty (30) days, LANDLORD shall not be in default of this Lease if LANDLORD commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default or, within thirty (30) days of the expiration of said time provided to LANDLORD to cure, the mortgagee or trust deed beneficiary commences to cure the default and diligently and in good faith continues to cure the default, including without limitation any time required for any such mortgagee or trust deed beneficiary to obtain possession of the Premises through foreclosure or otherwise, if such possession is required to cure such default. If COUNTY has received written notice from any mortgagee or trust deed beneficiary with an interest in any encumbrance affecting LANDLORD's interests in the Premises, which notice includes an address to which notices are to be delivered, COUNTY agrees to provide such mortgagee or trust deed beneficiary with notice of LANDLORD's default.

20. **COUNTY'S REMEDIES ON LANDLORD'S DEFAULT:** COUNTY, at anytime after LANDLORD is in default, can terminate this Lease immediately upon written notice to LANDLORD or can cure the default at LANDLORD's cost. If COUNTY at any time, by reason of LANDLORD's default, pays any sum or does any act that requires the payment of any sum (including charges for COUNTY's employees and equipment), the sum paid by COUNTY shall be due from LANDLORD to COUNTY within five (5) days of notice of such sum, and if paid at a later date shall bear interest at the maximum rate the COUNTY is permitted by law to charge from the date the sum was paid by COUNTY until COUNTY is reimbursed by LANDLORD. If LANDLORD fails to reimburse

COUNTY as required by this paragraph, COUNTY shall have the right to withhold from future rent due the sum COUNTY has paid until COUNTY is reimbursed in full for the sum and interest on it. The remedies set forth in this paragraph are in addition to and do not in any manner limit other remedies set forth in particular paragraphs of this Lease.

21. **COUNTY'S DEFAULT:** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by COUNTY:

- a. The vacating for more than thirty (30) consecutive days or abandonment of the Premises by COUNTY.
- b. The failure by COUNTY to perform any material provisions of this Lease to be performed by COUNTY, including the payment of rent, where such failure shall continue for a period of thirty (30) days after notice by LANDLORD to COUNTY; provided, however, that if the nature of COUNTY's default is such that more than thirty (30) days are reasonably required for its cure, then COUNTY shall not be deemed to be in default if COUNTY commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion. The purpose of this notice requirement is to extend the notice requirements of the unlawful detainer statutes of California.

22. **LANDLORD'S REMEDIES ON COUNTY'S DEFAULT:**

- a. In the event of any default by COUNTY, which is not cured by COUNTY, LANDLORD may, at its election, terminate this Lease by giving COUNTY thirty (30) days notice of termination. The purpose of this notice requirement is to extend the notice requirement of the unlawful detainer statutes of California. On termination of the Lease for default pursuant to this paragraph, LANDLORD shall have the right to recover from COUNTY only the following amounts for any and all damages, which may be the direct or indirect result of such default:
 - (1) The worth, at the time of the award, of the unpaid rent that has been earned at the time of termination of this Lease; and,
 - (2) The worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of rent that LANDLORD proves could not have been reasonably avoided; and,

- (3) The worth, at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that LANDLORD proves could not have been reasonably avoided; and,
- (4) Any other amount necessary to compensate LANDLORD for all detriment proximately caused by COUNTY's default which LANDLORD proves could not have been reasonably avoided.

(5) "The worth, at the time of the award," as used in **subparagraphs a(1) and a(2)** of this paragraph, is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. "The worth, at the time of the award," as referred to in **subparagraph a(3)** of this paragraph, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

b. Notwithstanding **subparagraph a**, above, on any termination of the Lease for default pursuant to this paragraph, the amount LANDLORD shall have the right to recover from COUNTY for any and all damages which may be the direct or indirect result of such default shall not exceed the amount LANDLORD would have been entitled to receive had the COUNTY terminated the Lease under **Paragraph 39, COUNTY'S RIGHT TO TERMINATE LEASE**.

23. **LANDLORD'S ACCESS TO PREMISES:** LANDLORD and its authorized representatives shall have the right to enter the Premises at all reasonable times for any of the following purposes:

- a. To determine whether the Premises are in good condition; and,
- b. To do any necessary maintenance and to make any restoration to the Premises that LANDLORD has the right or obligation to perform; and,
- c. To serve, post, or keep posted any notices required by law; and,
- d. To post "for sale" signs at any time during the term, to post "for rent" or "for Lease" signs during the last three (3) months of the term; and,
- e. To show the Premises to prospective brokers, agents, buyers, tenants, lenders or persons interested in an exchange, at any time during the term.

LANDLORD shall conduct its activities on the Premises as allowed in this paragraph in a manner that will cause the least possible inconvenience, annoyance, or disturbance to COUNTY.

24. **NOTICES:**

- a. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated two (2) COUNTY working days from the time of mailing if mailed as provided in this paragraph.

LANDLORD's address:

COUNTY's address:

Internal Services Group
Real Estate Services Division
825 East Third Street, Room 207
San Bernardino, CA 92415-0832

- b. If, at any time after the COUNTY accepts the Premises, the LANDLORD assigns or transfers a non-controlling interest of its rights in the Premises to a third party, LANDLORD must notify COUNTY of its action at least fifteen (15) COUNTY working days prior to completing any such action.
- c. If, at any time after the COUNTY accepts the Premises, the LANDLORD assigns or transfers a controlling interest of its rights in the Premises to a third party, LANDLORD must notify COUNTY of its action at least fifteen (15) COUNTY working days prior to completing any such action. The new owner must provide COUNTY with evidence of completion of such action. The parties shall immediately execute an amendment to this Lease stating the change of ownership of the Premises.

(1) Within fifteen (15) COUNTY working days of completing any action which affects a change in the ownership of the Premises, the new owner must provide COUNTY evidence of obtaining insurance in compliance with **Paragraph 17, INSURANCE**.

25. **INCORPORATION OF PRIOR AGREEMENT:** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

26. **WAIVERS:** No waiver by either party of any provisions of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provisions.

27. **AMENDMENTS:** No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successor in interest, expressing by its terms an intention to modify this Lease.

28. **SUCCESSORS:** This Lease shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

29. **SEVERABILITY:** If any word, phrase, clause, sentence, paragraph, section, article, part or portion of this Lease is or shall be invalid for any reason, the same shall be deemed severable from the remainder hereof and shall in no way affect or impair the validity of this Lease or any other portion thereof.

30. **TIME OF ESSENCE:** Time is of the essence of each provision of this Lease which specifies a time within which performance is to occur. In the absence of any specific time for performance, performance may be made within a reasonable time.

31. **QUIET ENJOYMENT:** Subject to the provisions of this Lease and conditioned upon performance of all the provisions to be performed by COUNTY hereunder, LANDLORD shall secure to COUNTY during the Lease term the quiet and peaceful possession of the Premises and all right and privilege appertaining thereto.

32. **PROVISIONS ARE COVENANTS AND CONDITIONS:** All provisions, whether covenants or conditions, on the part of either party shall be deemed to be both covenants and conditions.

33. **CONSENT:** Whenever consent or approval of either party is required that party shall not unreasonably withhold or delay such consent or approval.

34. **EXHIBITS:** All exhibits referred to are attached to this Lease and incorporated by reference.
35. **LAW:** This Lease shall be construed and interpreted in accordance with the laws of the State of California.
36. **VENUE:** The parties acknowledge and agree that this Lease was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Lease will be San Bernardino County. Each party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Lease is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County.
38. **ATTORNEYS' FEES AND COSTS:** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against the COUNTY, including such costs and attorneys' fees payable under **Paragraph 16, HOLD HARMLESS, Paragraph 48, PUBLIC RECORDS DISCLOSURE, and Paragraph 47, HAZARDOUS SUBSTANCES.**
38. **JURY TRIAL WAIVER:** LANDLORD and COUNTY hereby waive their respective right to trial by jury and agree to accept trial by judge alone of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either LANDLORD against COUNTY or COUNTY against LANDLORD on any matter whatsoever arising out of, or in any way connected with, this Lease, the relationship of LANDLORD and COUNTY, COUNTY's use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.
39. **COUNTY'S RIGHT TO TERMINATE LEASE:** The COUNTY shall have the right to terminate this Lease at any time whenever COUNTY, in its sole discretion, determines it would be in COUNTY's best interests to terminate this Lease. COUNTY shall give LANDLORD notice of any termination pursuant to this paragraph at least ninety (90) days prior to the date of termination. In the event COUNTY terminates this Lease pursuant to this paragraph, the LANDLORD shall have the right to receive from COUNTY only the following amounts under this Lease:
- a. If the LANDLORD has completed any agreed upon Improvements for COUNTY under **Paragraph 40, LANDLORD'S IMPROVEMENTS**, the LANDLORD shall be entitled to be reimbursed for that portion of the Improvements which have been completed and which have not been amortized on the date of termination.

- b. The total amount which the LANDLORD is entitled to receive under this paragraph shall be paid in monthly installments equal to the monthly rent being paid at the date of termination. The installment payments under this paragraph shall commence on the date after the date of termination when the next monthly rent would have been due, and shall continue until the total amount is paid in full. No interest or service charge shall be added to the total amount due.

Unless specifically stated otherwise, the COUNTY's rental and reimbursement obligations under this paragraph are limited to a COUNTY termination of the Lease under this paragraph and do not apply to any termination pursuant to any other paragraph of the Lease.

40. **LANDLORD'S IMPROVEMENTS:**

a. LANDLORD, at its cost, agrees to make the improvements to the Premises set forth in Exhibit A, Premises Specifications ("Improvements"). The Improvements shall be completed by the Commencement Date. LANDLORD shall, within ninety (90) days after the Commencement Date (or within ninety [90] days of any termination date if the termination date is prior to the Commencement Date), provide COUNTY receipts, invoices and other billing and/or accounting information necessary to verify the cost of all Improvements. The failure of LANDLORD to timely submit documentation to verify the cost of all Improvements shall waive LANDLORD's right to be reimbursed for the unamortized portion of such costs as provided in **Paragraph 39, COUNTY'S RIGHT TO TERMINATE LEASE, subparagraph 39.c**. The costs of all Improvements made by LANDLORD pursuant to this paragraph shall be amortized over the initial term of this Lease regardless of the actual commencement date of the initial term. The monthly rent, as set out in **Paragraph 4, RENT**, shall be deemed to include a proportionate share of the amortized cost of the Improvements.

- b. LANDLORD understands and agrees that from the time that this agreement is executed through the completion of the Improvements pursuant to Exhibit A, Premises Specifications, and acceptance of the improved Premises by COUNTY, LANDLORD shall not assign or transfer a controlling interest in the Premises to a third party, without COUNTY's prior review and approval.

- (1) LANDLORD understands and agrees to provide to COUNTY all documents and relevant information concerning any proposed transfer. COUNTY will have ten (10) COUNTY working days after receiving all such documents and information to complete its review. Upon COUNTY approval of an assignment or transfer, the parties shall immediately execute an amendment to this Lease stating the change of ownership of the Premises.

c. LANDLORD understands and agrees not to make any modifications to the improvement plans and specifications as set forth in Exhibit A, Premises Specifications, without first obtaining approval in the form of an amendment to this Lease. Any changes to these plans and specifications, without first acquiring said approval, will be at the expense of the LANDLORD and not the COUNTY.

d. In the event LANDLORD contracts for the construction of any portion of the Improvements set forth in Exhibit A, Premises Specifications, LANDLORD shall comply with the applicable portions of Labor Code Section 1720.2 and 1770 et seq. regarding general prevailing wages.

e. LANDLORD, at its sole expense, must provide all site plans (including elevations of the building and details of the exterior finish), space design plans and construction plans. LANDLORD agrees and understands that it will construct on the Premises during the period immediately following execution of this Lease, those Improvements shown on the space design and site plans prepared by LANDLORD and approved by COUNTY. The Improvements shall be constructed in accordance with **Paragraph 10, HEALTH, SAFETY AND FIRE CODE REQUIREMENTS**, and Exhibit A, Premises Specifications.

f. LANDLORD and COUNTY agree that the Improvements are projected to be constructed, completed and certified for occupancy by the City of _____ by _____, 20__, and that the COUNTY must be able to occupy the improved Premises no later than _____, 20__. In order to meet the projected occupancy date, the parties have agreed upon the following Project Construction Schedule setting forth the essential elements of construction, the projected completion dates, and the critical completion dates for each element. Those dates are as follows:

- (1) Preparation and Submittal of Building and Site Plans to the City of _____: Projected Completion Date: _____, 20__. Critical Completion Date: _____, 20__.
- (2) Approval and Permit Issuance of Building and Site Plans by City Agencies: Projected Completion Date: _____, 20__. Critical Completion Date: _____, 20__.

- (3) Lot Split Approval: Projected Completion Date: _____, 20___. Critical Completion Date: _____, 20__.
- (4) Tenant Improvement Plan Preparation and Submittal to City: Projected Completion Date: _____, 20___. Critical Completion Date: _____, 20__.
- (5) Permit Issuance for Tenant Improvements: Projected Completion Date: _____, 20___. Critical Completion Date: _____, 20__.
- (6) Site Work and Building Construction: Projected Completion Date: _____, 20___. Critical Completion Date: _____, 20__.
- (7) Construction of Tenant Improvements and Certified for Occupancy: Projected Completion Date: _____, 20___. Critical Completion Date: _____, 20__.

g. LANDLORD agrees that its failure to meet any of the above Critical Completion Date(s) will mean that the COUNTY will not be able to occupy the improved Premises by _____, 20__, and that the COUNTY may therefore elect to terminate this Lease in the event the LANDLORD fails to meet any of said dates. Any such election to terminate by the COUNTY must be in writing and given to LANDLORD within _____ (__) COUNTY working days of the missed Critical Completion Date, and before the LANDLORD completes the element and notifies the COUNTY of such completion.

h. LANDLORD agrees to provide the COUNTY a written progress report every _____ (__) days. The report shall contain up-date information of construction progress and notification of any permit approval. LANDLORD shall immediately notify COUNTY of the completion of every element in the Project Construction Schedule.

i. LANDLORD acknowledges that late delivery of the Premises to COUNTY will cause COUNTY to incur costs not contemplated by this Lease agreement, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, if LANDLORD does not deliver the improved Premises by _____, 20__, LANDLORD agrees to liquidated damages of _____ and __/00 Dollars (\$_____) for each day's delay from _____, 20__, to the date the COUNTY accepts the Premises or terminates this Lease agreement. The parties agree that this charge represents a

fair and reasonable estimate of the costs that COUNTY will incur by reason of late delivery. Acceptance of any charge shall not constitute a waiver of LANDLORD's default or prevent COUNTY from exercising any of the other rights and remedies available to COUNTY.

j. Notwithstanding **subparagraphs "f", "g" and "i", above**, in the event LANDLORD, after exercising all due diligence, is unable to meet any of the above mentioned Critical Completion Dates due to reasons which LANDLORD proves are outside the control of LANDLORD, such reasons include but are not limited to acts of God, unreasonable acts of governmental agencies causing unavoidable delays (the normal and reasonable times for review, action and reasonably anticipated delays by governmental agencies are already included in the timing of the Critical Completion Dates), strikes, or labor troubles, then the Critical Completion Dates(s) shall be extended for a period equivalent to the period of such delay.

(1) As soon as LANDLORD becomes aware, or should in the exercise of due diligence have become aware of any facts or circumstances which may or will cause such a delay, LANDLORD shall immediately notify COUNTY of any such delay or anticipated delay. In the event LANDLORD fails to timely notify COUNTY of any such delay or anticipated delay, LANDLORD, notwithstanding the main portion of this **subparagraph "j" above**, shall be subject to **subparagraph "i", above**, for the entire length of any delay.

41. **CAPTIONS, TABLE OF CONTENTS AND COVER PAGE:** The paragraph captions, table of contents and the cover page of this Lease shall have no effect on its interpretations.

42. **SURVIVAL:** The obligations of the parties which, by their nature, continue beyond the term of this Lease, will survive the termination of this Lease.

43. **COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM:**

a. LANDLORD's Warranty of Adherence to COUNTY's Child Support Compliance Program: LANDLORD acknowledges that COUNTY has established a goal of ensuring that all individuals who benefit financially from COUNTY through contracts are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon COUNTY and its taxpayers. As required by COUNTY's Child Support Compliance Program (COUNTY Code section 110.0101 et seq.) and without limiting LANDLORD's duty under this Lease to comply with all applicable provisions of law, LANDLORD warrants that it is now in compliance and shall during the term of this Lease maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC section 653a) and California Unemployment Insurance Code section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or District Attorney Notices of Wage and Earnings Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure section 706.031 and Family Code section 5246(b). LANDLORD hereby certifies that it has submitted to the COUNTY a completed Principal Owner Information (POI) Form (Exhibit C).

b. Termination for Breach of Warranty to Maintain Compliance with COUNTY's Child Support Compliance Program: Failure of LANDLORD to maintain compliance with the requirements set forth in the preceding subparagraph shall constitute a default by LANDLORD under this Lease. Without limiting the rights and remedies available to COUNTY under law or under any other provision of this Lease, failure to cure such default within ninety (90) days of notice by the San Bernardino County District Attorney shall be grounds upon which the COUNTY may terminate this Lease.

44. **BROKER'S COMMISSIONS:** LANDLORD is solely responsible for the payment of any commissions to any broker who has negotiated or otherwise provided services in connection with this Lease.

45. **ESTOPPEL CERTIFICATES:** Each party within thirty (30) days after notice from the other party, shall execute and deliver to other party, in recordable form, a certificate stating that this Lease is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications. The certificate also shall state the amount of minimum monthly rent, the dates to which the rent has been paid in advance, the amount of any security deposit or prepaid rent, and that there are no uncured defaults or specifying in reasonable detail the nature of any uncured default claimed. Failure to deliver the certificate within thirty (30) days shall be conclusive upon the party requesting the certificate and any successor to the party requesting the certificate, that this Lease is in full force and

effect and has not been modified except as may be represented by the party requesting the certificate, and that there are no uncured defaults on the part of the party requesting the certificate. The estoppel certificate shall be in the form as shown in Exhibit D, Estoppel Certificate.

46. **SUBORDINATION AND ATTORNMENT:**

a. As a condition precedent to the COUNTY's obligations under this Lease, LANDLORD shall obtain from each holder of a lien or encumbrance on the Premises which is senior to this Lease either an executed recordable subordination agreement which subordinates such lien or encumbrance to this Lease, or a non-disturbance agreement which contains terms at least as favorable to the COUNTY as those set forth in paragraph 2 ("Nondisturbance") of Exhibit E, Subordination, Nondisturbance and Attornment Agreement, hereto.

b. If, after execution of this Lease, a subsequent lienor requires that this Lease be subordinate to any such encumbrance, this Lease shall be subordinate to that encumbrance if, and only if, LANDLORD first obtains from the subsequent lienor an executed subordination, nondisturbance and attornment agreement, the terms of which are at least as favorable to the County as those set forth in Exhibit E, Subordination, Nondisturbance and Attornment Agreement hereto. If the COUNTY's County Counsel approves the form of a subordination, nondisturbance and attornment agreement pursuant to this subparagraph, and if such agreement is executed by the subsequent lienor, then the head of the COUNTY's Real Estate Services Division is authorized on behalf of the COUNTY to, and shall, execute such agreement, and shall further execute any other documents required by the lender to accomplish the purposes of this paragraph, provided such other documents are consistent with the terms of the subordination, nondisturbance and attornment agreement and this Lease.

47. **HAZARDOUS SUBSTANCES:**

a. LANDLORD hereby represents and warrants that, to the best of LANDLORD's knowledge, information and belief: (i) the Premises have not been exposed to Hazardous Substances and are presently free of all Hazardous Substances; (ii) neither the LANDLORD nor any of the other current tenants, if any, on the property of which the Premises forms a part is in violation or subject to an existing, pending or threatened investigation by any governmental authority under any applicable federal, state or local law, regulation, ordinance or other legislation pertaining to air, water, or soil quality or the handling, transportation, storage, treatment, usage or disposal of Hazardous Substances; (iii) any handling, transportation, storage, treatment or use of toxic or Hazardous Substances to date has been in compliance with applicable laws; and (iv) no reportable use has occurred on the Premises to date, and the soil, groundwater and vapor on or under the Premises is free of Hazardous Substances as of the Commencement Date.

b. LANDLORD shall indemnify, protect, defend and hold COUNTY, its agents and employees and the Premises, harmless from and against any and all losses and/or damages, liabilities, judgments, costs, claims, expenses, penalties, including attorneys' and consultant's fees, arising out of or involving the existence of any Hazardous Substances located in, about or under the Premises prior to

the Commencement Date of this Lease. LANDLORD's obligations under this paragraph shall include, but shall not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by COUNTY, and the cost of investigation, removal, remediation, restoration and/or abatement thereof. LANDLORD's obligations under this provision shall survive the expiration or early termination of this Lease. No termination, cancellation or release agreement entered into by COUNTY and LANDLORD shall release LANDLORD from its obligations under this Lease with regard to Hazardous Substances unless specifically agreed to by COUNTY in writing.

c. For the purposes of this paragraph, the following definitions shall apply:

(1) "Hazardous Substance," as used in this Lease, shall mean any product, substance or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either (i) potentially injurious to the public health, safety or welfare, the environment or the Premises; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of LANDLORD or COUNTY under any applicable statute or common law theory.

(2) "Reportable use" shall mean (i) the installation or use of any above- or below-ground storage tank; (ii) the generation, possession, storage, use, transportation or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with any governmental authority and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties.

(3) The term "applicable requirements" shall be deemed to refer to all applicable laws, covenants or restrictions of record, building codes, regulations and ordinances.

48. **PUBLIC RECORDS DISCLOSURE:** All information received by the COUNTY from the LANDLORD or any source concerning this Lease, including the Lease itself, may be treated by the COUNTY as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 et seq. (the "Public Records Act"). LANDLORD understands that although all materials received by the COUNTY in connection with this Lease are

intended for the exclusive use of the COUNTY, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which a LANDLORD has reasonably requested COUNTY to hold in confidence is made to the COUNTY, the COUNTY shall notify the LANDLORD of the request and shall thereafter disclose the requested information unless the LANDLORD, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides COUNTY a legally sound basis for the nondisclosure, and agrees to indemnify, defend, and hold the COUNTY harmless in any/all actions brought to require disclosure. LANDLORD waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event COUNTY fails to notify LANDLORD of any such disclosure request and/or releases any information concerning the contract received from the LANDLORD or any other source.

49. **CONDITION OF PREMISES:** LANDLORD shall deliver the Premises to COUNTY clean and free of debris on the Commencement Date and warrants to COUNTY that the plumbing, electrical systems, fire sprinkler system, lighting, air conditioning and heating systems and loading doors, if any, in the Premises shall be in good operating condition on the Commencement Date.

50. **CONDEMNATION:** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than ten percent (10%) of the floor area of the Premises, or more than twenty-five percent (25%) of the portion of the Common Areas or that portion of the Premises designated for COUNTY's parking, is taken by condemnation, COUNTY may, at COUNTY's option, to be exercised in writing within thirty (30) days after LANDLORD shall have given COUNTY written notice of such taking (or in the absence of such notice, within thirty (30) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If COUNTY does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to the total rentable floor area of the Premises. No reduction of rent shall occur if the condemnation does not apply to any portion of the Premises. COUNTY shall be entitled to receive the following amounts of any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power: (a) one hundred percent (100%) of any amount attributable to any excess of the market value of the Premises for the remainder of the Lease Term over the present value as of the Termination Date of the Rent payable for the remainder of the Lease Term (commonly referred to as the "bonus value" of the Lease); and (b) COUNTY shall have the right to make a separate claim in the Condemnation proceeding for: (i) The taking of the amortized or undepreciated value of any trade fixtures or leasehold improvements owned by COUNTY that COUNTY has the right to remove at the end of the Lease term and that COUNTY

elects not to remove; (ii) Reasonable removal and relocation costs for any trade fixtures or leasehold improvements that COUNTY has the right to remove and elects to remove (if Condemnor approves of the removal); (iii) Loss of goodwill; (iv) Relocation costs under Government Code section 7262, the claim for which COUNTY may pursue by separate action independent of this Lease; and (v) Any other amount in addition to the foregoing that the COUNTY is allowed under condemnation law. COUNTY shall have the right to negotiate directly with Condemnor for the recovery of the portion of the Award that COUNTY is entitled to under **subparagraph (b)** of this paragraph. In the event that this Lease is not terminated by reason of such condemnation, LANDLORD shall repair any damage to the Premises caused by such condemnation authority pursuant to **Paragraph 12, MAINTENANCE**, and **Paragraph 18, DESTRUCTION OF PREMISES**.

* * * * *

* * * * *

* * * * *

57. **INTERPRETATIONS:** As this agreement was jointly prepared by both parties, the language in all parts of this agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

END OF LEASE TERMS.

COUNTY OF SAN BERNARDINO

LANDLORD:

(If an individual, do not use "By" line. If a company, may need to also sign as an individual.)

Fred Aguiar, Chairman, Board of Supervisors

By: _____
(Type out name here.)

Dated: _____

Title: _____

Dated: _____

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD

By: _____
(Type out name here.)

Title: _____

J. Renee Bastian, Interim Clerk of the Board
of Supervisors

Dated: _____

By: _____
Deputy

Date: _____

Approved as to Legal Form:
ALAN K. MARKS, County Counsel

By: _____

Deputy

Dated: _____

110568.09

**EXHIBIT B - SAN BERNARDINO COUNTY - LICENSED JANITORIAL AND
MAINTENANCE CONTRACTOR SERVICES**

(Janitorial Service to provide/supply all sanitary and paper goods.)

DAILY SERVICES:

1. Empty and damp clean all ashtrays.
2. Empty all waste baskets and other waste containers.
3. Dust mop all tiled/terrazzo floors.
4. Vacuum traffic lanes of carpeting.
5. Dust all desks, chairs, tables, filing cabinets and other office furniture.
6. Damp clean lobby counters.
7. Clean and sanitize rest room fixtures, mirrors, chrome pipes, etc.
8. Clean splash marks from walls of rest rooms.
10. Refill soap, towel and paper containers.
11. Clean and sanitize drinking fountains.
12. Clean hand marks off glass on entrance doors.
13. Damp clean table tops in coffee rooms.
14. Clean kitchen sinks and counters.
15. Sweep entryways.
16. Brush down steps of inside stairwells.
17. Vacuum elevator carpet. All carpeted areas are to be vacuumed using a dual motor vacuum with a rotating cylindrical brush, rather than a beater bar.
18. Spot clean all walls and doors including elevator.
19. Spot clean carpets of small spillage, footprints, etc.
20. Keep janitor closets clean and orderly.
21. Remove paper and debris outside main entrance.

WEEKLY SERVICE:

1. Wet mop all tiled/terrazzo floors.
2. Clean all desk tops and tables that are cleared; clean all chairs.
3. Clean hand marks from walls, doors and woodwork.
4. Vacuum all carpeting completely. All carpeted areas are to be vacuumed using a dual motor vacuum with a rotating cylindrical brush, rather than a beater bar.

TWICE-MONTHLY SERVICE:

1. Dust high areas, including window coverings.
2. Vacuum upholstered furniture.
3. Clean lobby directories and fire extinguisher glass.
4. Machine clean and seal all tiled floors.

EVERY THREE MONTHS:

1. Vacuum dust and dirt accumulation from air conditioning vents.
2. Brush down cobwebs inside building.
3. Wash inside windows and partitions.
4. Replace cartridge in rest room automatic air fresheners.

Page 1 of 2

**EXHIBIT B - LICENSED JANITORIAL AND MAINTENANCE CONTRACTOR
SERVICES
(Continued):**

The above are considered the minimum standard janitorial items, and are to be performed by a licensed janitorial contractor. Landlord is responsible for providing all services related to the health and cleanliness of the leased facility.'

The following services are to be performed by a licensed maintenance contractor.

WEEKLY SERVICE:

1. Contract with a mat service to supply and replace interior entry mats with cleaned mats.
2. Replace light bulbs and tubes inside building when needed.

ONCE-MONTHLY SERVICE:

1. Licensed pest control.

EVERY THREE MONTHS:

1. Carpet to be cleaned by a professional carpet cleaning company using hot water extraction process.
2. Wash exterior and interior windows and partitions.

Page 2 of 2

EXHIBIT D - ESTOPPEL CERTIFICATE

Date: _____

To: _____

Re: _____, _____
(address) (city)

The undersigned ("County") hereby certifies as follows:

1. County is in possession of _____, _____, California (the "Premises"). County leases the Premises under a written Lease agreement dated _____, 20____, Lease Agreement No. _____ (the "Lease"), wherein County is the lessee or tenant, and _____, ("Owner") is the lessor or landlord.

2. The Lease is in full force and effect and has not been amended, supplemented or changed, except as follows:

3. The term of the Lease commenced on _____, 20____, and is scheduled to expire _____, 20____. County has no right or option to renew or extend the term of the Lease except as to the following: _____ (____) _____-year options.

4. County's current monthly rental is \$_____.____, payable on the last day of each month.

5. County currently has no security deposit with Owner.

6. County is not in default under the terms of the Lease and no condition exists which, with the passage of time or the giving of notice, or both, would constitute such a default. To the best of County's knowledge, Owner is not in default under the terms of the Lease, and no condition exists which, with the passage of time or the giving notice, or both, would constitute such a default.

7. County hereby certifies that the foregoing is true and correct.

By: _____, Real Property Manager
Real Estate Services Division

County of San Bernardino

EXHIBIT E

RECORDED AT REQUEST OF
AND TO BE RETURNED TO:

Attn: _____

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is entered into this _____ day of _____, 20____, by and between _____ ("Tenant"), and _____, _____ ("Lender").
(name) (type of entity)

Recitals

A. Tenant entered into a certain Lease Agreement, dated as of _____, 20____ (the "Lease"), between Tenant, as lessee, and _____, _____ ("LANDLORD"), as lessor, pertaining to that certain premises commonly known as _____, _____, California _____ (zip code), as more particularly described in the Lease ("Premises"), located on that certain real property located in the County of San Bernardino, State of California, as more particularly described in Exhibit "A", attached hereto and incorporated herein (the "Property"). Original LANDLORD shall be referred to as "Borrower".

B. Borrower made, executed and delivered, or is about to make, execute and deliver to Lender a certain promissory note, dated substantially contemporaneously herewith ("the Note"), in the original principal sum of \$_____. The obligations evidenced by the Note shall be referred to as the "Loan". The Note is executed pursuant to the terms of a certain Construction Loan

Agreement, dated substantially contemporaneously herewith (the "Loan Agreement"), between Lender and LANDLORD.

C. Borrower has executed and delivered, or is about to execute and deliver to Lender, a certain Deed of Trust and Assignment of Rents, dated substantially contemporaneously herewith (the "Deed of Trust"), encumbering the Property to secure the Loan.

D. It is a condition precedent to the Loan that the Deed of Trust shall unconditionally be and remain at all times a lien or charge upon the Property, prior and superior to the Lease.

E. It is a condition precedent to the Loan that Tenant will specifically and unconditionally subordinate and subject the Lease, together with all rights and privileges of Tenant thereunder, to the lien or charge of the Deed of Trust.

F. It is to the mutual benefit of the parties hereto that Lender and Borrower enter into the Loan.

Covenants

In consideration of the recitals set forth above and the covenants and agreements contained herein, the parties agree as follows:

1. **Subordination:** Tenant hereby subordinates all of Tenant's right, title, interest and leasehold estate in and to the Premises to the lien, operation, and effect of the Deed of Trust.

2. **Nondisturbance:** Tenant's peaceful and quiet possession of the Premises shall not be disturbed and Tenant's rights and privileges under the Lease, including but not limited to the provisions of the Lease set forth under the headings "TERM," "EXPANSION OF RENTAL SPACE," "OPTION TO EXTEND TERM," "HOLD HARMLESS," "INSURANCE," "DESTRUCTION OF PREMISES," "COUNTY'S RIGHT TO TERMINATE LEASE," and "CONDEMNATION," shall not be diminished by Lender's foreclosure, acceptance of a deed in lieu of foreclosure, or any other exercise of Lender's rights or remedies under the Deed of Trust, the Note, the Loan Agreement, any other loan document, or the laws governing secured loans. All of the provisions of the Lease shall prevail over any conflicting provisions in the Deed of Trust, the Note, the Loan Agreement, any other loan document, or the laws governing secured loans. Tenant shall not be named or joined in any foreclosure, trustee's sale, or other proceeding or action to enforce the Deed of Trust, the Note, the Loan Agreement, any other loan document, unless such joinder shall be legally required to perfect such foreclosure, trustee's sale, or other proceeding or action.

3. Attornment: If the Deed of Trust is foreclosed for any reason, or LANDLORD deeds the Property to Lender in lieu of foreclosure, the Lease shall not be extinguished and Tenant shall be bound to Lender under all the terms, covenants, and conditions of the Lease for the balance of the term of the Lease with the same force and effect as if Lender was the lessor under the Lease. Tenant shall attorn to Lender as Tenant's Lessor, and agrees to recognize Lender as the new owner and promises to pay the rent to Lender as LANDLORD. This attornment shall be effective and self-operative, without the execution of any other instruments on the part of any of the parties to this Agreement, immediately upon Lender succeeding to the interest of LANDLORD under the Lease.

4. Disbursements: Lender is under no obligation or duty to monitor the application of the proceeds of the Loan. Any application of such proceeds for purposes other than those provided for in the Loan Agreement or any of the other Loan Documents shall not defeat the effect of this Agreement in whole or in part.

5. Acknowledgment of Assignment: Tenant acknowledges and consents to the assignment of LANDLORD's rights under the Lease to Lender pursuant to a certain Assignment of Leases (the "Assignment"). Tenant shall pay rent to Lender upon receipt of written notice from Lender that Lender has revoked the waiver of LANDLORD's right to receive the rents from the Premises pursuant to the Assignment, notwithstanding the fact that Lender has not foreclosed the Deed of Trust, nor succeeded to the interest of LANDLORD under the Lease. Tenant shall not be liable to LANDLORD for any payments made to Lender hereunder.

6. Assignment or Sublease: Tenant may assign or sublease all or any portion of the Property in accordance with the Lease, but no such assignment, transfer, or subletting shall relieve Tenant of any of its obligations under the Lease. Tenant hereby covenants that the Lease has not been modified or altered. Tenant shall not enter into or agree to any amendment or modification to the Lease with LANDLORD, without the prior written consent of Lender. Tenant shall not voluntarily subordinate or subject the Lease or any interest therein to any lien or encumbrance without the prior written consent of Lender, unless said lien or encumbrance shall relate to personal property that can be removed without damage to the Premises, or unless such subordination is required by the Lease.

7. Notices: Tenant shall deliver to Lender a copy of all notices, requests, or demands delivered by Tenant to LANDLORD in accordance with this Paragraph. Tenant shall also deliver to Lender any and all notices, demands, or requests received by Tenant from LANDLORD relating to any of the aforesaid. Lender shall deliver to Tenant all notices, requests or demands in accordance with this Paragraph. All notices required hereunder or pertaining hereto shall be in writing and shall be deemed delivered and effective upon the earlier of (i) actual receipt; or (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is sent by express courier service or United States mail,

postage prepaid, certified or registered, return receipt requested; or (iii) the date of delivery if such notice is sent by facsimile, in each case, to the applicable address as follows:

to Tenant: Internal Services Group
Real Estate Services Division
825 East Third Street
San Bernardino, California 92415-0832
Facsimile No.: (909) 387-7833

to LANDLORD: _____

Attn: _____

Facsimile No.: _____

to Lender: _____

Attn: _____

Facsimile No.: _____

Notwithstanding the foregoing, any notice under or pertaining to this Agreement, given and effective in accordance with applicable law, shall be effective for purposes hereof. Any party may change the address at which it is to receive notices hereunder to another business address within the United States (but not a post office box or similar mail receptacle) by giving notice of such change of address in accordance herewith.

8. LANDLORD's Default: Tenant hereby agrees that Tenant will notify Lender in writing, in accordance with **Paragraph 7 above**, of any default by LANDLORD under the terms of the Lease and Tenant shall not cancel or terminate, or acquiesce to the cancellation or termination of the Lease

without giving Lender a reasonable period (not less than 30 days) after delivery of such notice to cure the default; Lender's rights and remedies under the Loan Agreement or any of the Loan Documents (as defined in the Loan Agreement) shall not be prejudiced by its exercise or failure to exercise the right to cure described above. Except for LANDLORD's defaults under **Paragraph 3, "TERM"**, of the Lease, relating to LANDLORD's failure to meet the Critical Completion Dates as set forth in Exhibit "A", Page 4, Schedule of Completion, if Lender elects within such thirty (30) day period to foreclose on the Deed of Trust, such time period shall be extended so that Lender shall have a reasonable period within which to foreclose the Deed of Trust and shall have an additional thirty (30) days from the time Lender becomes owner of the Property through foreclosure within which to cure such default. If any default by LANDLORD is cured within the time periods described above, Tenant shall have no right to terminate the Lease by virtue of such default.

9. Binding Effect: This Agreement shall be binding upon the parties and their respective heirs, personal representatives, successors, and assigns.

10. Law: This Lease shall be construed and interpreted in accordance with the laws of the State of California.

11 Jury Trial Waiver: The parties hereby waive their respective right to trial by jury and agree to accept trial by judge alone for any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by any party against the other on any matter whatsoever arising out of, or in any way connected with, this Lease, the relationship of the tenant to the borrower or the borrower to the tenant, tenant's use or occupancy of the Property, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

12. Attorneys' Fees and Costs: If any legal action is instituted to enforce or declare any party's rights hereunder, each party, regardless of which party is the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under Paragraph ___, "HOLD HARMLESS".

13. Venue: The parties acknowledge and agree that this Lease was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Lease will be San Bernardino County. Each party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Lease is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County.

14. Counterparts: This Agreement may be executed by the parties in counterparts, and when any one or more copies of this Agreement have been executed by all of the parties, this Agreement shall be effective, and all of such copies shall be deemed and construed to be one agreement.

* * * * *

* * * * *

* * * * *

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Tenant:

COUNTY OF SAN BERNARDINO:

Chairman, Board of Supervisors

Date: _____

SIGNED AND CERTIFIED THAT
A COPY OF THIS DOCUMENT
HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

EARLENE SPROAT, Clerk of the
Board of Supervisors

By: _____
Deputy

Date: _____

Approved as to Legal Form:

ALAN K. MARKS, County Counsel
San Bernardino County, California

Lender:

By: _____
(Name)

Title: _____

Date: _____

LANDLORD:

By: _____

Title: _____

Date: _____

By: _____
Deputy

Date: _____